

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

**DEMETRIS HUNTER AND
LISA HUNTER**

V.

**ALLSTATE VEHICLE AND
PROPERTY INSURANCE COMPANY**

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CIVIL ACTION NO.

JURY DEMANDED

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C.
§1441(a)**

NOTICE OF REMOVAL OF ACTION UNDER U.S.C. §1441

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Defendant Allstate Vehicle and Property Insurance Company files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441 and 1446(a) and shows as follows:

I. INTRODUCTION

1. This is an insurance coverage and bad faith case. On October 27, 2021, Plaintiffs filed their Original Petition in Cause No. 210456-C in the 260th District Court of Orange County, Texas, initiating a civil cause of action against Defendant. Exhibit C.

2. Removal is based on diversity jurisdiction because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and there is complete diversity between Plaintiffs and Defendant.

3. Plaintiffs allege multiple causes of action against Defendant related to its handling of a property insurance claim submitted by Plaintiffs. Plaintiffs specifically allege breach of contract; non-compliance with Chapter 542 of the Texas Insurance Code; and non-

compliance with Chapter 541 of the Texas Insurance Code and “bad faith.” Plaintiffs also allege that Defendant’s conduct was committed “knowingly” as that term is defined in the Texas Insurance Code.

4. Allstate received the Citation and Plaintiffs’ Original Petition by certified mail on October 14, 2021. Allstate filed its Original Answer to Plaintiffs’ Original Petition on November 1, 2021. Exhibit E.

5. Allstate now files this Notice of Removal based on the grounds asserted herein, and promptly upon the filing of same, is also filing a Notice of Filing Notice of Removal with the Orange County state court in which this case was previously pending.

II. GROUNDS FOR REMOVAL

6. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(a) because the parties involved are citizens of different states, and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

A. Complete Diversity Exists Between the Viable Parties.

7. According to Plaintiffs’ Original Petition, at the time this action was commenced, Plaintiffs were, and still are, domiciled in Orange County, Texas. In determining diversity jurisdiction, the state where someone establishes his domicile serves a dual function as his state of citizenship. *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564 (5th Cir. 2011). A person’s state of domicile presumptively continues unless rebutted with sufficient evidence of change. *Id.* “Evidence of a person’s place of residence...is prima facie proof of his domicile.” *Id.* (citations omitted). Furthermore, once established, “[a] person’s state of domicile presumptively continues unless rebutted with sufficient evidence of change.” *Id.* Thus, for purposes of diversity of citizenship, Plaintiffs are Texas citizens.

8. Allstate is a corporation incorporated under the laws of the State of Illinois, having its principal place of business now and at the time this action was commenced at Northbrook, Cook County, in the State of Illinois. Allstate is now, and was at the time this action was commenced, a citizen of the State of Illinois.

B. The Amount in Controversy Exceeds \$75,000.

9. Additionally, the claims asserted by Plaintiffs exceed \$75,000. Plaintiffs pleaded that they “seek monetary relief, including damages of any kind, penalties, costs, expenses, prejudgment interest, and attorney's fees, in excess of \$250,000.00 but less than \$1,000,000.00.” Exhibit C at ¶ 33. Thus, should Plaintiffs prevail on their claims herein, the damages potentially to be awarded exceed \$75,000 on their face.

III. VENUE

10. Venue for removal is proper in this district and division under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action was pending, the 260th District Court of Orange County, Texas, and a substantial part of the events giving rise to Plaintiffs’ claims allegedly occurred in that district.

IV. PROCEDURAL REQUIREMENTS

11. Pursuant to 28 U.S.C. § 1446(a), the following exhibits are attached and indexed:

EXHIBIT	DESCRIPTION
A.	Index of Matters Being Filed
B.	Case Summary in the state court action
C.	Plaintiffs’ Original Petition filed on October 12, 2021
D.	Issued Citation for Allstate filed October 13, 2021

E.	Allstate's Original Answer to Plaintiffs' Original Petition filed on November 1, 2021
F.	List of Counsel of Record

12. This Notice of Removal is being filed within 30 days of service of the citation and Plaintiffs' Original Petition and is thus timely filed under 28 U.S.C. §1446(b). There exists an actual and justiciable controversy between Plaintiffs and Allstate with regard to the legal issues herein and this controversy is within the jurisdiction of this Court.

13. Pursuant to 28 U.S.C. § 1446(a), all pleadings, process, orders and all other filings in the state court action are attached to this Notice.

14. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice of Removal will be given to all adverse parties promptly after the filing of same.

15. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of the Notice of Removal will be filed with the District Clerk for the 260th District Court of Orange County, Texas promptly after filing of same.

V. CONCLUSION

16. Allstate respectfully requests that the above-captioned action now pending in the 260th District Court of Orange County, Texas be removed to the United States District Court for the Eastern District of Texas, Beaumont Division.

DATE: November 11, 2021.

Respectfully submitted,

HOPE & CAUSEY, P. C.

/s/ Wesley R. Ward

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of the foregoing instrument has been delivered to all interested parties on November 11, 2021, via e-filing addressed to:

James M. McClenny
J. Zachery Moseley
G. Brandon Schilter
McClenny, Moseley & Associates
1415 Louisiana St., Suite 2900
Houston, TX 77002

ATTORNEY FOR PLAINTIFF

/s/ Wesley R. Ward
Wesley R. Ward